

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ORANDO NICOLAS,

Petitioner,

Case No. 1:04-CV-616

v

Hon. Gordon J. Quist

PHILIP WRONA, et al,

Defendants.

ORDER LIFTING STAY

Pending before the court is a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241. Petitioner claims he is a citizen of Haiti. He entered the United States on June 15, 1992, and sought asylum, but asylum was eventually denied on October 6, 1996. In June 1999 he was convicted of criminal sexual conduct, third degree, by a Michigan state court and was subsequently ordered removed by an immigration judge on November 5, 2002. Petitioner has been in custody pending removal to Haiti since May 2003, and it is this custody that gives rise to the habeas petition.

This petition was originally filed in the Eastern District of Michigan and the case was subsequently transferred to this district. In his petition, petitioner does not challenge the right of the respondents to remove him pursuant to the final order of removal, but only challenges the length and legality of his current detention under *Zadvydas v Davis*, 533 U.S. 678 (2001). Under *Zadvydas*, an alien subject to a final order of removal may only be held by immigration authorities for a

presumptive period of six months while the authorities attempt to remove him, but for a longer period of time if it can be demonstrated there is a reasonable likelihood that he will be removed in the foreseeable future.

Following its investigation into this matter, the U.S. Attorney's office represents that officials from the Haitian Consulate conduct periodic (generally monthly) interviews in cities such as Miami, Florida, to document persons who will be allowed to return to Haiti. The government proposes to transport petitioner to Miami for such an interview, as a necessary prerequisite to his removal to Haiti. However, prior to transferring the case to this district, the Eastern District of Michigan entered an order staying any removal or deportation until further order of the court. ICE will not transport the petitioner out of this district while the stay is in effect.

The Eastern District's stay order said the government could move to vacate this stay and the government has now made such a motion. The court has had two telephone conferences with attorneys for the government and for the petitioner, and the parties have now agreed that the stay should be lifted to allow petitioner to be taken to Miami or some other location where he can be interviewed by Haitian authorities for the purpose of obtaining documentation for his removal to Haiti. Removal to Haiti will, of course, free petitioner from the custodial status of which he presently complains.

Accordingly, with the concurrence of all parties, the stay heretofore issued by the Eastern District of Michigan is VACATED this date, for the purpose of allowing petitioner to be taken to Miami or some other locality where he can be interviewed by Haitian authorities for the purpose of obtaining the necessary documentation to remove him to Haiti. The petition for a writ

habeas corpus will remain on file until petitioner has been removed to Haiti or until further order of the court.

IT IS SO ORDERED.

Dated: May 13, 2005

/s/ Hugh W. Brenneman, Jr.
Hugh W. Brenneman, Jr.
United States Magistrate Judge